



N A R U C
National Association of Regulatory Utility Commissioners

March 29, 2019

VIA ELECTRONIC FILING

Marlene H. Dortch
FCC Secretary
Federal Communications Commission
445 12th Street, SW Washington, D.C. 20554

RE: Notice of Oral Ex Parte:

In the Matters of Bridging the Digital Divide for Low Income Consumers, WC Docket No. 17-287, Lifeline and Link Up Reform Modernization, WC Docket No. 11-42, and Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 09-197.

Ms. Dortch:

On March 27, 2019, I met separately with ***Randy Clarke, Acting Legal Advisor for Wireline and Public Safety, Ryan Palmer, Division Chief, Telecommunications Access Policy Division, and Nirali Patel, Wireline Advisor, Office of the Chairman Ajit Pai.*** On March 28, 2019, I met with ***Travis Litman Chief of Staff and Senior Legal Advisor, Wireline and Public Safety.***

In all of these meetings, I noted the following Lifeline issues:

The FCC can easily and should immediately incorporate APIs into the national verifier.

NARUC passed a resolution in July of 2018¹ and filed comments² targeting the absence of carrier APIs and the resulting inefficiencies in the current National Verifier implementation plan. APIs are not only user friendly, they permit carrier assistance and online verification, allowing the consumers to have a smooth and streamlined enrollment experience. NARUC's resolution specifically notes that, without APIs:

¹ Resolution to Implement Expeditiously a Properly Functioning and Consumer-Friendly Federal Lifeline National Eligibility Verifier (July 18, 2018), available online at: <https://pubs.naruc.org/pub/0A748224-CA10-661A-FF7B-D435D091C56F>.

² August 10, 2018 filed Initial Comments of the National Association of Regulatory Utility Commissioners in WC Docket Nos. 17-287, 11-42, & 09-197, available online at: <https://ecfsapi.fcc.gov/file/1081010358674/18%200810%20Initial%20NARUC%20Wireline%20Comments%20on%20National%20Verifier%20final.pdf>.

- Customers seeking online enrollment must navigate the complicated National Verifier process alone, only to repeat the same process with the carrier, exponentially increasing the odds of input mistakes that could affect the processing of the application;
- Lifeline service providers will be unable to provide remote assistance to rural and low-income customers and customers with disabilities, many of whom rely on online enrollment because they do not live or work near a retail location; and
- Service providers will no longer be able to screen ineligible applicants and incorrect documents prior to National Verifier review, increasing the costs for the National Verifier.

Left uncorrected, the elimination of carrier APIs could deny access to mobile wireless broadband and voice services to millions of low-income Americans in rural areas, and to other Americans that are uniquely dependent on online enrollment, like veterans with disabilities or homebound seniors. The FCC should order key agency and USAC staff to work quickly with the States to implement a properly functioning, and consumer-friendly National Verifier that incorporates carrier APIs. Fortunately, the incorporation of an API into the National Verifier is not difficult and can be completed quickly. After all, the National Lifeline Accountability Database has operated since 2014 with a service provider API allowing providers to screen applications, obtain proper documentation and assist consumers to efficiently submit Lifeline enrollments.

The FCC should expeditiously approve its November 2017³ tentative decision to eliminate the stand-alone Lifeline Broadband Provider designation and reverse its pre-emption of State regulatory authority to designate ETCs.

Again NARUC passed a resolution in February of 2018⁴ and filed initial and reply comments⁵ directly responding to this aspect of the FCC November 2017 Notice of Proposed rulemaking.

³ See, *In the Matter(s) of Bridging the Digital Divide for Low-Income Consumers*, WC Docket No. 17-287, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, FOURTH REPORT AND ORDER, ORDER ON RECONSIDERATION, MEMORANDUM OPINION AND ORDER, NOTICE OF PROPOSED RULEMAKING, AND NOTICE OF INQUIRY (FCC 17-155) (rel. December 1, 2017), available online at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-155A1.pdf.

⁴ *Resolution to Ensure that the Federal Lifeline Program Continues to Provide Service to Low-Income Households* (February 2018), available online at: <https://pubs.naruc.org/pub/E0D49A02-AAAA-6EDE-79A1-9D97B1C6E393>.

⁵ See, February 21, 2018 *Initial Comments of the National Association of Regulatory Utility Commissioners* in WC Docket Nos. 17-287, 11-42, and 09-197, available online at: <https://ecfsapi.fcc.gov/file/1022185377406/18%200221%20NARUC%20Initial%20Lifeline%20NPRM%20cmts.pdf>; March 26, 2018 *Reply Comments of the National Association of Regulatory Utility Commissioners* in WC Docket Nos. 17-287, 11-42, and 09-197, available online at: <https://ecfsapi.fcc.gov/file/1032459169809/18%200324%20NARUC%20Reply%20Lifeline%20NPRM%20cmts.pdf>

The tentative decision to reverse its pre-emption of State authority to designate ETCs is correct. The FCC cannot create a designation process under 47 U.S.C. § 214 that bypasses *ab initio* State commissions. The FCC simply has no role in the ETC designation process unless the State cannot act as a result of State law. NARUC agrees with the NPRM's ¶ 55 acknowledgements that the 2016 Lifeline order⁶ "preempted state authority in a manner wholly inconsistent with section 214," and that it "erred in preempting state commissions from their primary responsibility to designate ETCs." The proposed broadband provider designations specified in the 2016 Lifeline Order bypass clear Congressional directives. The statute, by its express terms, requires the action proposed in ¶¶ 54-55 of the NPRM. The FCC must "eliminate the Lifeline Broadband Provider category of ETCs and the State preemption upon which it is based." *Id.* Not only is elimination required by the plain text of the 1996 Act, that elimination is, on its face, the best option for maximizing oversight of program integrity and efficiency. Legal considerations aside, it is difficult to understand why any advocate for Lifeline services would support the approach outlined in the 2016 Lifeline Order as it allows a carrier's choice to eliminate crucial State safeguards to the integrity of the program. That bypass of State oversight can do nothing but reduce scrutiny imposed on any carrier's application and its subsequent operations. Conversely, the NPRM's proposal to comply with the law and reestablish the State's ETC designation role can only result in less fraud and abuse. Fraud and abuse divert funds from the consumers Congress expects to benefit from the Lifeline program. State "cops" remain a significant barrier to such diversions through the conduct of ETC designations and thereafter by monitoring designated carrier activities.

The FCC should continue to allow non-facilities based carriers to receive Lifeline funds because they have been crucial in ensuring that low-income households are connected to vital telecom services.

There are 11,339,293 Lifeline customers.⁷ More than 75% of low-income families in the Lifeline program use non-facilities-based services. In ¶ 65, the NPRM proposes to limit Lifeline Support "to facilities-based broadband service provided over the ETC's voice-and-broadband capable last mile network." At this point in the evolution of the Lifeline program, shifting to only facilities-based carriers will severely undermine the *raison d'être* for the program⁸ and will certainly significantly reduce subscriptions by qualified consumers.

⁶ Third Report and Order, Further Report and Order, and Order on Reconsideration, *In the Matter(s) of Lifeline and Link Up Reform and Modernization*, 31 F.C.C. Rcd. 3962 (rel. April 27, 2016)(2016 Lifeline Order).

⁷ *Wireless and Wireline Data: USAC report LI03- Eligible Telecommunications Carriers*, at: <http://www.usac.org/about/tools/fcc/filings/2017/q4.aspx>; *USAC Funding Disbursement Search tool*, at: <http://www.usac.org/li/tools/disbursements/default.aspx>.

⁸ The federal lifeline program is based on a 1985 *Federal-State Joint Board Recommended Decision and Order*, which resulted in a January 13, 1986 FCC decision. The FCC's decision was clearly focused on "promoting telephone subscribership among low income groups." *MTS and WATS Market Structure*, 51 FR 1371-01 (January 13, 1986). There was no discussion of supporting infrastructure. In passing the 1996 Act, Congress reaffirmed this program by including in 47 U.S.C. § 254(b)(3) a requirement to assure that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services."

The FCC should help states “defray any cost associated with making customer eligibility information available” to the National Verifier.

The NPRM, at ¶¶ 59-61, asks a number of questions about how it can better partner with States to implement the National Verifier. Paragraph 50 specifically “seeks comment on ways States can be encouraged to work cooperatively with the Commission and USAC to integrate their state databases into the National Verifier without unnecessary delay.”

In February 2016, NARUC passed a Resolution on Reform of Lifeline Program that identifies one necessary element of any federal integration initiative: additional compensation to cover additional/ongoing costs associated with the new procedures. Almost 25 States have implemented databases that allow ETCs or State agents to verify the eligibility of an applicant for the Lifeline program before such applicant is enrolled in the program. The state databases have proven to be a strong and effective tool against waste, fraud, and abuse by ensuring that only eligible applicants receive Lifeline benefits. The FCC’s proposal for a National Verifier raises a range of questions. But it is obvious that, however integration occurs, State agencies may require additional federal funds to compensate for costs associated with verification and/or access to State databases/other resources.

The FCC should maintain support for Voice Services.

The FCC should maintain support for Voice Services. As even the NPRM acknowledges at ¶ 76, at least in rural areas, it is unclear whether low income consumers would be able to obtain quality voice services without Lifeline support. Others have made valid policy arguments for retention of voice services, pointing out, among other things, that if support for stand-alone voice service⁹ is removed, Lifeline customers will have to buy broadband bundles, which even with a \$9.25 discount, might well be unaffordable. Plus, maintaining voice-only Lifeline service promotes consumer choice. Certainly, some consumers simply want a phone – not broadband service. Moreover, phasing out support for voice services is, at a minimum, facially inconsistent with a Congressional scheme which, in Title II, (i) focuses explicitly on opening competition in local phone “telecommunications services,” and (ii) requires carriers to offer a “telecommunications service” to qualify for federal universal service support subsidies. Given the recent reclassification of Broadband Internet Access Service as an information service, the only qualifying “telecommunications service” such subsidized carriers currently offer is voice service.

The FCC should work with States to properly launch the National Verifier.

Last month, NARUC passed another resolution captioned “*Resolution to ensure the National Verifier is properly launched so that Low-Income Consumers can Access the Federal Lifeline program.*” It is attached to this letter in full text.

⁹ See, e.g., NTCA/WTCA Petition for Reconsideration, WC Docket No. 11-42 et al., at 6-7 (filed June 23, 2016); Petition for Reconsideration of the National Association of State Utility Consumer Advocates, WC Docket 11-42 et al., at 3-4 (filed June 23, 2016); Joint Lifeline ETC Petitioners' Petition for Partial Reconsideration and Clarification, WC Docket No. 11-42 et al., at 9-11 (filed June 23, 2016).

As the title indicates, the resolution urges “the FCC and USAC to work with the states to properly launch the National Verifier so that eligible low-income consumers can reasonably and efficiently sign up for the federal Lifeline program without undue burdens or delays.”

NARUC appreciates Chairman Pai’s statements in the press conference following the March meeting offering to work with States to connect relevant databases in the rollout of the National Verifier. Still NARUC, in the attached resolution, provides at least three specific actions the FCC should target to assure eligible consumers have reasonable access to the Lifeline program:

- 1. The FCC should ensure that critical state/federal databases for eligibility programs such as SNAP and Medicaid are accessible in states where the National Verifier has been launched or is being launched.***

FCC has directed USAC to hard launch certain States without having gained access to major federal or state benefits program databases, such as the SNAP and Medicaid databases. This shortcoming significantly undermines the efficiency and effectiveness of the National Verifier. Without access to the databases, the National Verifier cannot perform automated, near-real time eligibility verification. Instead, USAC will have to rely on the manual verification process that may be costlier and more time consuming with higher potential for errors.

In the interim, there should be focus on assuring access to critical databases are in place where the National Verifier has been launched or will be launched.

- 2. The FCC should allow the use of Managed Care Organization-generated proof of eligibility for Medicaid recipients until the National Verifier can access relevant databases or “is otherwise able to handle these matters in a satisfactory manner.”***

To avoid an over-reliance of the manual enrollment process in States where the National Verifier has been, or will be, launched without the databases needed for the automated verification process, the FCC should direct USAC to accept proof of eligibility generated through third-party access to state databases, including proof of eligibility generated through Managed Care Organizations’ access to state Medicaid databases. Clearly, such access can only mitigate efficiency losses and reduce the risk of fraud and abuse created by the manual verification process.

- 3. The FCC should streamline the Lifeline paper application.***

Paper applications are important to many Lifeline applicants because many have no easy access to either a computer or network access. Those with access to a connected computer, may be disabled and/or otherwise require assistance to fill out the forms. Still others may not be comfortable filling out forms online for security reasons. At least one Lifeline provider estimates that 10% of its Lifeline subscribers sign up via paper applications every year.

In July 2018, the FCC and USAC revised the paper application from a service provider specific one-page application to a standardized eight-page application. This revision appears to significantly increase the likelihood that an eligible applicant will fail to successfully complete the application. The application's detailed legal disclosures, blank spaces, and fine print combine to undermine comprehension by many that qualify for the program. For example, applicants are required to acknowledge and/or agree to nine different statements by initialing nine separate boxes to signify their assent. However, it appears that many applicants are confused and check-mark each statement rather than initial it. Under the FCC's rules, 47 C.F.R. § 54.410(d)(3), those applications can be rejected. Some have argued that many applicants are so intimidated by the length and complexity of the application that they decline to complete the application. Others point out poor design elements. Whatever the reason, there is no question that the number of successful paper applications post July 2018, has declined precipitously. At least one Lifeline provider estimates that since July, after the National Verifier launched in six States, the number of paper applications submitted declined by approximately 51%.

I am providing a copy of this ex parte to each of the cited FCC representatives. I have attempted to fairly cover the arguments I presented. If any of those FCC representatives points out a deficit in this overview, I will immediately refile an amended letter to cover that deficit. If you have questions about this ex parte, please do not hesitate to contact NARUC's General Counsel – Brad Ramsay at 202.898.2207 (w), 202.257.0568(c) or at jramsay@naruc.org.

Respectfully Submitted,

James Bradford Ramsay
NARUC General Counsel

cc *Nirali Patel, Wireline Advisor, Office of the Chairman Ajit Pai*
 Randy Clarke, Acting Legal Advisor for Wireline and Public Safety
 Travis Litman Chief of Staff and Senior Legal Advisor, Wireline and Public Safety
 Ryan Palmer, Division Chief, Telecommunications Access Policy Division

Resolution to ensure the National Verifier is Properly Launched so that Low-Income Consumers can Access the Federal Lifeline Program

Whereas since 1985, the federal Lifeline program has provided eligible low-income households with affordable access to telecommunications services so that low-income households can be connected to jobs, healthcare, education, family, and friends;

Whereas currently, approximately 9 million households participate in the Lifeline program, receiving \$9.25 per month in Lifeline benefits from the Universal Service Fund;

Whereas in the Third Report and Order, *In the Matter of Lifeline and Link Up Reform and Modernization*, 31 F.C.C. Rcd. 3962 ¶¶ 5, 7, 126-166 (2016), the Federal Communications Commission (“FCC”) modernized the federal Lifeline program by expanding Lifeline to include broadband service and by establishing the Lifeline National Eligibility Verifier (“National Verifier”) to address “waste, fraud, and abuse;”

Whereas the FCC’s objectives for the National Verifier were threefold: to (1) protect against and reduce waste, fraud, and abuse; (2) lower costs to the federal Universal Service Fund and Lifeline providers through administrative efficiencies; and (3) improve service to beneficiaries by facilitating choice and improving the enrollment experience;

Whereas following a brief, five-month soft launch, on November 2, 2018, the Universal Service Administrative Company (“USAC”) implemented the National Verifier hard launch in six states: Colorado, Mississippi, Montana, New Mexico, Utah, and Wyoming; and on January 15, 2019, USAC implemented the National Verifier hard launch in six additional states and territories: Guam, Hawaii, Idaho, New Hampshire, North Dakota, and South Dakota. On December 4, 2018, USAC implemented the National Verifier soft launch in North Carolina, Tennessee, Missouri, and Pennsylvania and is slated to meet the FCC’s mandate of launching in all 50 states by the end of 2019;

Whereas consumer groups, public utilities commissions, and Lifeline providers have identified significant shortcomings that undermine the three FCC objectives for the National Verifier as illustrated in comments filed in WC Docket Nos. 17-287, 11-42, 09-197, by, *e.g.*, the National Lifeline Association (December 18, 2018), Nebraska Commissioner Crystal Rhoades (December 17, 2018), the National Association of Regulatory Utility Commissioners (“NARUC”) (August 10, 2018), New America’s Open Technology Institute, Access Humboldt, Benton Foundation, Center for Rural Strategies, Common Cause, Consumers Union, Electronic Frontier Foundation, Free Press, National Association for the Advancement of Colored People, National Consumers League, National Digital Inclusion Alliance, National Hispanic Media Coalition, Native Public Media, Public Knowledge, Greenlining Institute, and United Church of Christ (August 10, 2018), as well as the July 5, 2018 Emergency Petition filed by Q Link Wireless;

Whereas in July 2018, NARUC already passed a resolution urging the FCC to order USAC to incorporate application programming interfaces (“APIs”), into its National Verifier implementation;

Whereas the issues that have been raised include: (1) new eligibility documentation requirements

that prevent the use of the Supplemental Nutrition Assistance Program (“SNAP”), Electronic Benefits Transfer (“EBT”) card or the Medicaid enrollment card as acceptable proofs of Lifeline eligibility; (2) lengthy and complex paper application forms that include an “initialing” requirement pursuant to 47 C.F.R. § 54.410(d)(3) to indicate acknowledgement and consent; and (3) the lack of adequate state or federal qualifying program databases for the National Verifier to perform automated eligibility verification;

Whereas USAC, as directed by the FCC has indicated that it will now require a level of additional proof associated with low-income program participation designed to ensure that a consumer is a *current* participant in one of the five federal low-income programs used to qualify for Lifeline. Specifically, USAC has announced that a copy of a consumer’s SNAP EBT card will no longer be sufficient proof of the consumer’s current participation in the SNAP program because the SNAP card does not include either an “issued on” date within the prior 12 months or an “expiration date.” If this change in Lifeline policy is implemented, it will preclude Lifeline providers from continuing to accept SNAP EBT cards and, in some instances Medicaid enrollment cards, as proof of Lifeline eligibility. This change was not contemplated by the States upon review of the FCC’s rules, and appears to be inconsistent with FCC requirements;

Whereas for years, eligible low-income consumers have provided and Lifeline providers have accepted SNAP EBT cards and Medicaid cards as proof of eligibility, though all SNAP benefit cards and many Medicaid enrollment cards do not include issuance or expiration dates on the card itself;

Whereas the FCC in the *Lifeline Reform Order*, 27 F.C.C. Rcd. 6656 ¶ 101, explicitly states that SNAP EBT cards and Medicaid enrollment cards are acceptable documentation of program-based eligibility;

Whereas eliminating these forms of documentation can only undermine the program as more Lifeline enrollees qualify through participation in SNAP and Medicaid than through any other federal low-income programs;

Whereas in many cases, a SNAP or Medicaid card is the only documentation in a Lifeline applicant’s possession to demonstrate participation in the qualifying Federal program. Due to the transient nature of the Lifeline customer base, many eligible customers do not hold onto their initial SNAP or Medicaid enrollment letter, and will face additional challenges obtaining another physical proof;

Whereas at least one carrier estimates that approximately 25 % of their subscribers currently use their SNAP or Medicaid card to qualify and enroll;

Whereas the FCC has directed USAC to hard launch certain States without having gained access to major federal or state benefits program databases, such as the SNAP and Medicaid databases. This shortcoming significantly undermines the efficiency and effectiveness of the National Verifier. Without access to the databases, the National Verifier will not be able to perform automated, near-real time eligibility verification. Instead, they have to rely on the manual verification process that may be costlier and more time consuming with higher potential for errors;

Whereas to avoid an over-reliance of the manual enrollment process in States where the National Verifier has been, or will be, launched without the databases needed for the automated verification process, the FCC should direct USAC to accept proof of eligibility generated through third-party access to state databases, including proof of eligibility generated through Managed Care Organizations' ("MCO") access to state Medicaid databases;

Whereas as one of the wireless carriers points out in its August 2018 Emergency Petition for an order directing the USAC to alter the National Verifier processes, filed in WC Docket Nos. 17-287, 11-42, 09-197, such access could help mitigate the efficiency losses and reduce the risk of fraud and abuse created by the manual verification process;

Whereas paper applications are important to many Lifeline applicants because some applicants are not comfortable filling out forms online for security reasons; are disabled and cannot access broadband and a computer; or otherwise require a friend or family member to assist with understanding and filling out the application in a home or other setting where a computer is not readily available. Some Lifeline providers estimate that 10% of its Lifeline subscribers sign up via paper applications per year;

Whereas in the newly revised paper application, applicants are required to acknowledge and/or agree to nine different statements by initialing nine separate boxes to signify their assent. However, many applicants incorrectly interpret the boxes as checkboxes, check-marking each statement rather than initialing it. Because of this, these applications are rejected by the National Verifier and Service Providers for the non-National Verifier states. The "initialing" requirement is codified as 47 C.F.R. § 54.410(d)(3);

Whereas in July 2018, the FCC, working closely with USAC, changed the paper application by way of Public Notice DA 18-161, from a service provider specific one page application to a standardized eight page application. The paper application with detailed legal disclosures, blank spaces, and significant fine print is not well-designed for comprehension by many low-income consumers. For example, many potential applicants are apparently so intimidated by the length and complexity of the application that they decline to complete the application. A Lifeline provider estimates that since July, after the National Verifier launched in six States, the number of paper applications submitted has declined by approximately 51%; *now therefore be it*

Resolved that the Board of Directors of the National Association of Regulatory Commissioners, convened at its 2019 Winter Policy Summit in Washington DC, urges the FCC and USAC to work with the states to properly launch the National Verifier so that eligible low-income consumers can reasonably and efficiently sign up for the federal Lifeline program without undue burdens or delays; *and be it further*

Resolved that NARUC urges USAC to follow the rules set forth by the FCC for the proof of eligibility; streamline the Lifeline paper application; ensure that critical state/federal databases for eligibility programs such as SNAP and Medicaid are accessible in states where the National Verifier has been launched or is being launched; and allow Lifeline providers to provide MCO-

generated proof of eligibility for Medicaid recipients, until such time as the National Verifier is otherwise able to handle these matters in a satisfactory manner.

Sponsored by the Committee on Telecommunications

Adopted by the NARUC Board of Directors on February 13, 2019